

## **REMARKS**

### **Status of Claims**

Claims 1-12, 30-34, 39-41 and 43-44 are pending in the application.

Claim 42 has been cancelled.

Claim 39 has been amended to incorporate subject matter of claim 42.

Claim 44 has been rewritten in independent form.

In the Office Action mailed July, 2005, the declaration under 37 CFR 1.131 was considered to be ineffective because a petition was not filed under 1.47. In this regard, the examiner cites MPEP 715.04 [R-2]. Applicants submit that no petition is required.

MPEP 715.04 (I) (C) states: If a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43, the affidavit or declaration may be signed by the 37 CFR 1.47 applicant or the legal representative, where appropriate. (Emphasis added).

37 CFR 1.47 relates to the filing of a declaration for patent application, not a declaration under 37 CFR 1.131. Specifically, 37 CFR 1.47 states: If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in 1.17(i) and the last known address of the nonsigning inventor. (Emphasis added).

In the present case, all inventors were able to sign the declaration for patent application. The present declaration is being filed under 37 CFR 1.131 and thus 715.04(I)(C) is not applicable. As noted in the last paragraph of 715.04(I), following section 715.04(I)(D), "where it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining inventors are sufficient." (Emphasis added). Thus, it is submitted that no petition is required.

Applicants request that the previously submitted declaration now be considered.

Claims 1 and 7 were rejected under 35 U.S.C. §102(e) as being anticipated by Yung (US Patent No. 6,484,350).

Claims 2-6 and 30-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yung in view of US Patent No. 6,256,834 to Meijer, et al.

Claims 33 and 34 were rejected under 35 U.S.C. §102(e) as being unpatentable over Yung in view of Meijer and further in view of US Patent No. 3,653,189 to Miyake, et al.

Claim 39 was rejected under 35 U.S.C. §103(a) as being unpatentable over Yung in view of US Patent No. 5,979,014 to Reichow, et al.

Claim 40 was rejected under 35 U.S.C. §103(a) as being unpatentable over Yung in view of US Patent No. 5,979,014 to Reichow, et al and further in view of US Patent No. 6,295,831 to Watson.

Claims 41 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yung in view of US Patent No.3,599,273 to Shirayanagi, et al.

Claim 42 was rejected under 35 U.S.C. §103(a) as being unpatentable over Yung in view of Reichow, et al. and further in view of Meijer, et al.

Claim 44 was rejected under 35 U.S.C. §103(a) as being unpatentable over Yung in view of Reichow, et al. and further in view of Miyake, et al.

Claims 39, 41, and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over US Patent No. 6,311,366 to Sepke, et al. in view of Reichow, et al.

Claims 39 and 41 were rejected under 35 U.S.C. §103(a) as being unpatentable over Reichow, et al. in view of Sepke, et al.

Claim 41 was rejected under 35 U.S.C. §103(a) as being unpatentable over Sepke, et al. in view of Reichow, et al. or Reichow, et al. in view of Sepke, et al. and further in view of Watson.

Claims 8-12 were considered to be allowable over the prior art.

The Examiner considers the declaration would be effective to overcome the Yung reference provided a petition is filed. As noted above, Applicants submit that a petition is not required. Accordingly, it is respectfully requested that Yung be removed as a reference against claims 1-7 and 30-34 and 39-44.

The secondary references, Meijer, et al., Reichow, et al., Shirayanagi, et al., Watson, and Miyaki, et al., are not as relevant as was Yung and do not suggest the subject matter of claims 1-7 and 30-34 and 39-44.

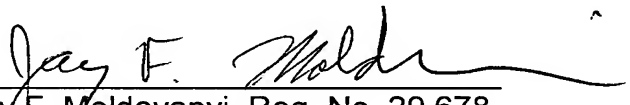
Claim 39, which was rejected over Sepke and Reichow, has been amended to incorporate the subject matter of claim 42. As acknowledged by the Examiner, the combination of Sepke and Reichow does not suggest a lid connected to a body and adapted for selectively covering an open end of a dirt cup and a handle connected to the lid.

An early allowance of all pending claims is earnestly solicited.

Respectfully submitted,


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**CERTIFICATE OF MAILING**

I certify that this Amendment is being deposited with the United States Postal Service as First Class mail under 37 C.F.R. § 1.8, addressed to: MAIL STOP - AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: September <u>26</u> , 2005	Signature:  Printed Name: Kathleen A Nimrichter
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